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ABSTRACT

Presented in a question and answer format, this guide integrates Texas and federal standards (under Section 504 of the Rehabilitation Act of 1973) for students with dyslexia and related disorders. An overview summarizes the four phases of the approved process for determining the presence of dyslexia as well as principles of required evaluation procedures, placement procedures, reevaluation procedures, and procedural safeguards. The 36 questions and answers then deal with specific concerns in the broad areas of: relationship of the dyslexia program to Section 504; general information; data gathering; designee information; teacher training; and identification of students. Typical questions address: eligibility of the child with suspected dyslexia for handicapped services; documentation in writing; protections for parents; state law regarding dyslexia; the school district's responsibilities; monies which may be used to support the dyslexia program; assessment requirements; recordkeeping; intelligence tests; special education evaluation; remedial instruction; teacher certification requirements; parent referral; and referral for speech and language problems. A compliance statement with the Civil Rights Act of 1964 completes the document. (DB)

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DYSLEXIA AND RELATED DISORDERS

AN OVERVIEW OF STATE AND FEDERAL REQUIREMENTS

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TEXAS EDUCATION AGENCY
AUSTIN, TEXAS

FOREWORD

In recent years, the Texas Education Agency has provided assistance to school districts and parents regarding the state and federal laws concerning dyslexia and related disorders. The Agency has developed *Dyslexia and Related Disorders: An Overview of State and Federal Requirements* to provide school districts and parents additional information pertaining to the state's dyslexia law and its relationship to the federal laws, Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

A section containing frequently asked questions and answers follows the overview of state and federal requirements.

Lionel R. Meno
Commissioner of Education

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OVERVIEW

Students with dyslexia and related disorders may qualify as handicapped persons under Section 504 of the Rehabilitation Act of 1973. This federal law is a civil rights statute designed to protect qualified handicapped persons from discrimination in any program that receives federal funding. Although sometimes confused with the Individuals with Disabilities Act (IDEA), formerly the Education of the Handicapped Act (EHA), the law is not an entitlement or funding statute. It does however, provide certain procedural protections for handicapped persons to ensure that their needs are met as adequately as the needs of nonhandicapped persons. Some students with dyslexia may qualify under IDEA; if so, the requirements under IDEA apply.

The interface of Section 504 with the dyslexia guidelines established by the State Board of Education of Texas is crucial. Section 504 requires each school to:

- conduct an unbiased evaluation of a child who has a handicap, has a record of such a handicap, or is regarded as having a handicap
- make placement decisions through a team of persons knowledgeable about the student and the assessment data
- offer due process procedures for the resolution of disputes

The ''Procedures Concerning Dyslexia'' (i.e., a set of guidelines for the implementation of state law), approved by the State Board in January 1986, outlines four phases of a process for determining whether students may have reading difficulties and, if so, whether the difficulties may be due to dyslexia.

The first two of the four phases comprise screening and remediation measures for all types of reading difficulties and are not intended to be specific procedures for identifying dyslexia per se or students suspected of having dyslexia. In addition, these two phases are not intended for use with the student who may have a handicap that substantially limits a major life activity such as learning, who has a record of such a handicap, or who is regarded as having such a handicap.

Phase I describes actions that teachers and school personnel are to take for all students. These actions are the kinds of good teaching practices that will help students who need extra assistance to receive help early, before problems become major.

Phase II describes actions to be taken for students who display common reading difficulties that can be corrected with remedial programs and techniques. These actions help determine whether the student has a problem that is *environmental* in nature and can be corrected by ordinary remedial techniques. Use of the actions described in Phase II also helps to rule out cultural or environmental

causes of the reading difficulty in order to focus on a potential *constitutional* cause of the problem, i.e., dyslexia. Should parents notify the district that their child is suspected of having dyslexia or a related disorder, then Section 504 regulations must be followed for that student at this point in the identification process.

Phase III is the first phase in which specific procedures are implemented to determine whether a student has dyslexia. This is the phase at which students may be tested individually. At this point, districts must follow the requirements of Section 504 in the identification, evaluation, and placement process. Those regulations are as follows:

Evaluation Procedures

Districts must establish standards and procedures that ensure that tests and other evaluation materials:

- have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer
- include material tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient
- are selected and administered so as to best ensure that, when a test is given to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level, or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills
- include multiple measures of a student's reading abilities such as informal assessment information (e.g., anecdotal records, lists of books the student has read, audio recordings of the student's oral reading, etc.)

Placement Procedures

Decisions about the student's placement and program must be made by a team of persons knowledgeable about the student, the meaning of the evaluation information, and the placement options. Information used to make decisions must come from a variety of sources including aptitude and achievement tests, teacher recommendations, and reports on physical/medical condition, social or cultural background, and adaptive behavior. The local district may provide or review a medical diagnosis if this information is needed to make a decision. (Adaptive behavior is the effectiveness with which the student meets the standards of personal independence and social responsibility expected of his or her age and cultural group.)

A student with dyslexia is considered handicapped under Section 504 of the rehabilitation Act of 1973 if the condition substantially limits the student's reading activities. The placement team must design an appropriate education that meets the individual educational needs of this handicapped student as adequately as the needs of nonhandicapped students are met. The team must also ensure the mainstreaming of the handicapped student with nonhandicapped persons to the maximum extent appropriate.

Reevaluation Procedures

The district must establish procedures for periodic reevaluation.

Procedural Safeguards

A district must establish a system that includes notice, an opportunity for parents or guardians to examine relevant records, an impartial hearing with opportunity for participation by the parents or guardians and representation by counsel, and a review procedure.

QUESTIONS AND ANSWERS

The following questions and answers relate to various topics important to the dyslexia program:

RELATIONSHIP OF DYSLEXIA PROGRAM TO SECTION 504

How does Section 504 of the federal law affect the way school districts implement the state dyslexia law and the State Board rule?

- If a student is suspected of having a handicapping condition within the scope of IDEA, then all special education procedures must be followed. If this is done and the student is determined as handicapped under IDEA, the requirements of Section 504 will be met.

- If a student is not suspected of having a handicap within the scope of IDEA, he or she may still be handicapped within the scope of Section 504. These students must be evaluated, placed, and provided an education that meets the individual needs of the student as adequately as are the needs of nonhandicapped students in the district. At times, such nondiscrimination requires the provision of special services or modifications of programs to enable the student to benefit from the education which is offered to him or her. (The most familiar example is the provision of a ramp for students in wheelchairs.) Following the dyslexia guidelines will assure attention to the special problems of dyslexics who are considered handicapped under Section 504. Particular attention must be paid to the procedural and appeal provisions of Section 504.

Only Phases III and IV single out students for individualized testing and evaluation. Procedures in Phase III must be carried out within the requirements of Section 504 including notification of parents, opportunity for parents to examine relevant records, evaluation using validated tests, and placement by a team of persons knowledgeable about the student and about the meaning of the evaluation data and placement options. (While the state guidelines refer to a dyslexia

designee, a single designee alone cannot make the placement decision.) The steps taken to ensure compliance with Section 504 should be documented in writing. Procedures in Phase IV must be carried out under the requirements of IDEA.

2 Is every student suspected of having dyslexia handicapped within the meaning of Section 504?

No. To be a handicapped person within the meaning of the statute, the student's handicap must substantially limit a major life activity, the student must have a record of such handicap, or the student must be regarded as having such handicap. The code of federal regulations lists nine major life activities that may be affected: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working [34CFR 104.3(j)]. Thus a student who is performing adequately in the classroom and in school generally and does not have any other major interference with his or her life activities is not handicapped under Section 504. If a student experiences serious difficulty in reading, then school personnel would follow the "Procedures Concerning Dyslexia." In some cases, the student may be regarded as handicapped within the meaning of Section 504.

3 Do all students need to go through the phases sequentially?

Not all students have to go through the phases sequentially. If a student exhibits characteristics associated with dyslexia, that student does not have to fail through Phases I and II to be evaluated for dyslexia (or for special education, for that matter).

4 How long must students spend in each phase?

Staff must be sensitive to the amount of time spent by students in each phase so that students do not spend unreasonable amounts of time in Phase II only to finally discover that they should have been referred on to Phase III.

5 Must each district provide a program for dyslexics at each grade level through Grade 12?

Yes. The procedures include a chart entitled "Overall Plan and Timetable" for phasing in the program through Grade 3, which was applicable to the first years after the dyslexia law was passed. However, now the program must be implemented at all grade levels.

6 What is recommended to be documented in writing to ensure compliance with Section 504?

The following is recommended to be documented in writing should an Office for Civil Rights investigation be initiated by a formal complaint:

- documentation that the notice of evaluation has been given to parents
- documentation of the evaluation data
- documentation of the decisions made by the designee's team concerning the handicap (whether or not a handicapping condition exists)
- documentation of the placement options and placement decisions

7 What procedural protections are provided to parents who may not agree with the decisions made by a district?

- If the student is suspected of having a handicapping condition within the scope of IDEA, the procedural protections provided for in that law and the implementing rules apply.
- If the student is not suspected of having a handicapping condition within the meaning of IDEA, then the procedural protections of Section 504 apply. Under Section 504, parents may file a request for hearing with the school district. The school district will appoint as an impartial hearing officer a person who is not connected in any way to the district. At the hearing, there will be opportunity for participation by the parents and, if desired, by counsel for the parents. If either party is not satisfied with the results of the hearing, they may appeal the decision to court.

General Information

8 What is the state law regarding dyslexia?

House Bill 157, passed in 1985, requires all school districts to treat students with dyslexia and related disorders. This law is now found in Section 21.924 of the Texas Education Code as follows:

"Screening and Treatment for Dyslexia and Related Disorders"

a. In this section:

   1. *Dyslexia* means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and socio-cultural opportunity.

   2. *Related disorders* includes disorders similar to or related to dyslexia such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

b. The State Board of Education shall approve and from time to time review a program under which students enrolling in public schools in this state are tested for dyslexia and related disorders at appropriate times.

c. In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.

d. The State Board of Education shall adopt any rules and standards necessary to administer this section. [State Board rules concerning dyslexia are found in 19 TAC 75.174.]

9 What is the difference between the State Board of Education's procedures and its rule?

In January 1986, the State Board passed procedures or general guidelines for school districts to follow. At that time, the Board directed districts to target Grades 1-3 for implementation of programs by January 1988. In March 1990, the State Board passed a rule, or more formal directive, that school districts must follow the previously established State Board procedures (guidelines) and must implement programs through Grade 12.

10 What are the school districts' responsibilities in implementing the state dyslexia law?

School districts must collect pertinent data on each enrolled student suspected of having dyslexia or a related disorder. The team of persons knowledgeable about the student, the assessment data, and the placement options must evaluate the data and place the student.

If a student is suspected of having a more severe disability, that student must be referred to special education for possible evaluation.

While a parent or a physician may have determined that the student has dyslexia or a related disorder, the district is ultimately responsible for identification. However, parents must be notified when a problem is suspected; at the same time, they must be notified of the procedural safeguards (due process).

11 What monies may be used to support the dyslexia program?

State foundation funds, compensatory funds, or local funds are to be used. For students whose handicapping condition warrants special education services, special education funds may be used.

DATA GATHERING

12 What kinds of data about students should school districts collect to comply with the State Board of Education rule?

The data to be collected are the data that schools normally collect. They include the results of most of the following:

- vision and hearing screening
- academic progress reports
- teacher reports of aptitude and behavior

- parent conferences
- TAAS results
- basal reading assessment
- speech and language screening*
- reading and writing portfolios (folders including samples of student writing, lists of books read, audio tapes of oral reading, formal assessment, etc.)

These data are collected on all students and can be used to determine whether a student needs individual assessment required in Phase III.

13 What types of assessment are required to satisfy Section 504 regulations in identifying students with dyslexia?

Each district must establish assessment procedures that comply with regulations in Section 104.35. Specifically, tests and other evaluation materials must:

- have been validated for the specific purpose for which they are used, and be administered by trained personnel in conformance with instructions provided by their producer
- include materials tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient
- be selected and administered so as to best ensure that, when a test is given to a student with impaired sensory, manual, or speaking skills, the test reflects accurately the student's aptitude or achievement level, or whatever other factor the test purports to measure, rather than the student's impaired sensory, manual, or speaking skills
- informal assessment information such as teacher observation, parent reports, and informal reading inventories

In addition, evaluation data must provide information from a wide variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

Although individual district procedures will vary, many districts have available much of the required evaluation data without having to perform additional testing. However, if evaluation data are not current, new information may need to be obtained.

*Not for all students. Such screenings are to be given through a special education referral process if deemed necessary.

14 Is it necessary to record these results on special forms?

No, this sort of information is usually recorded in students' cumulative folders. Districts do not have to change their normal methods of recording students' data. Nor does the state require special forms to record evaluation results. It is important that school districts keep this information in writing should the Office for Civil Rights investigate a formal complaint.

15 If students do not make expected academic progress in Grade 1, should they be evaluated for dyslexia services?

In most cases, no. It could be that the student has not had the breadth of enhanced language and literacy experiences required to progress at the same rate as his or her classmates. The student may need tutoring, placement in smaller classes or groups, or counseling. If a student continues not to progress, he or she may need to be provided remedial, compensatory, or dyslexia services.

The student must be allowed the opportunity to develop cognitively before being given any kind of label that may follow him or her throughout school.

16 At what grade level does the data gathering process begin?

It is recommended that priority be given to Grades 1, 2, and 3 to focus on early intervention. However, when a student fails to make expected academic progress, the student should be referred to an alternative program at any grade level.

DESIGNEE INFORMATION

17 Who will be the dyslexia designee as called for in the procedures?

The designee can be one person or a group. The designee must have time to review data and make recommendations to the designee's team or 504 committee. Section 504 requires that iden-

tification and placement decisions must be made by a group of knowledgeable persons. This group or team must be knowledgeable about reading, about the dyslexia program and guidelines, about the student being evaluated, about the assessment procedures and data, and about the placement options available.

18 What are the designee's responsibilities?

- The designee must ensure that a program is (or programs are) available for all students identified as having dyslexia or related disorders.
- The designee must ensure that a team of professionals is responsible for evaluating the data to identify and place students with dyslexia and related disorders who are handicapped under the definition of Section 504. This may be a team or teams at the district level or a team or teams at the campus level.
- The designee must ensure that the State Board's set of guidelines, "Procedures Concerning Dyslexia," is being followed.

19 Who ultimately identifies the student as dyslexic and makes the placement decision?

The identification must be made by the school district designee's team. This team should include the designee and one or more of the following individuals: the superintendent, a principal, a counselor, a consultant, a specialist, a teacher or other professional educator. The team must be knowledgeable about reading, about the dyslexia program and guidelines, about the student being evaluated, about the assessment procedures and data, and about the placement options available. In addition, it is recommended that the student's parent(s) also be a part of this process.

20 Should each campus have a dyslexia designee?

This should be a local district decision based on need.

21 What data should be reviewed?

The team should review data in the student's school records or cumulative folder, data from teachers and parents, and any additional information as needed.

22 Should additional information be considered, if available? For example, can a physician or a private diagnostician identify a student as having dyslexia or a related disorder?

Yes. A district should consider all information available on a student. Ultimately, however, the school district designee's team must take responsibility for identification. Guidelines listed in "Procedures Concerning Dyslexia" must be followed.

23 What kind of test can be used to determine adequate intelligence, and is there a cutoff score to determine adequate intelligence?

An individually administered standardized intelligence test may be used, but it is not required. Any reasonable, proven assessment of intelligence such as a test of listening comprehension may be considered.

There is no cutoff score to determine adequate intelligence. Adequate intelligence will be determined by the policies of the district.

24 Is it necessary to use an individually administered intelligence test to admit a student into a program for students with dyslexia and related disorders?

No. If the designee's team determines that the student has adequate intelligence based on the information collected, then it is not necessary to administer a test. Documentation of the determination of adequate intelligence must be maintained.

25 What factors must be considered by the dyslexia designee's team before placing a student into a dyslexia program?

Identification must be determined based on the following:

- The student has not made academic progress commensurate with potential.
- The student has the characteristics of dyslexia or a related disorder.
- The student has adequate intelligence.
- The constitutional origin of the disability has been documented by ruling out all other possibilities.

The following factors must NOT be used to identify a student for a dyslexia program:

- The student's primary language is not English.
- The student has inconsistent attendance.
- The student lacks experiential background.
- The student has had a brain insult, disease, or surgery.

26 When may a student be referred for special education evaluation?

A student may be referred by anyone for testing through special education at any time a handicapping condition is suspected. The dyslexia program is not meant to take the place of the special education program.

27 When is a student who is having problems in reading to be considered for placement in an instructional program for dyslexia and related disorders?

If he or she is not progressing in the regular, remedial, and/or compensatory programs in the school district and other causes have been eliminated, the student should be evaluated to determine if he or she is dyslexic or has a related disorder.

28 Should parents be notified if a district is planning to evaluate a student for dyslexia or a related disorder?

Yes, notice of the proposal to identify the student must be given to the parents prior to any evaluation. In addition, notice of due process rights should be provided to parents at this time. Permission for testing is not necessary before testing begins, unless there is a referral to special education (under IDEA).

29 How long should a student remain in a remedial program or in a program designed for students with dyslexia and related disorders?

The local district should, as with any alternative program, establish criteria for exit. Even after exit, the student may require some continuing supports in the regular program to be successful. Under Section 504, the district must provide those supports or related aids and services.

30 How can it be determined that the student's lack of progress has a constitutional origin?

Basically, this determination is made by a process of ruling out other origins. If the student has had adequate educational experiences and has not experienced a brain insult, disease, or surgery aggravating the reading problems, then it may be concluded that his or her lack of progress is of constitutional origin.

31 Is there one test that can be used to determine that a student is dyslexic or has related disorders?

There is no one test that a district can use. Each district should use multiple data sources and select both formal and informal assessment measures that are best suited for determining dyslexia and related disorders.

Teacher Training

32 What certification should teachers of students with dyslexia and related disorders have?

They need valid elementary teaching certificates if they are assigned to teach elementary students and valid secondary certificates if they are to teach secondary students. Teachers with coursework in the areas of reading and reading disabilities should be considered first for assignment to teach students with dyslexia and related disorders.

Identification of Students

33 Should all students be reviewed for dyslexia?

While all students' reading progress should be monitored, only those considered by the referring source (e.g., parents, teachers, counselors, etc.) as suspected of having dyslexia or related disorders should be referred for possible evaluation, identification, and placement.

34 May a parent refer a student?

Yes, parents may request to have their student evaluated for dyslexia or a related disorder. The district may use information provided by the parent; however, ultimately the district must identify the student as having dyslexia or a related disorder. Should parents disagree, they have a right to due process. See Question 7.

35 Must a student fail a class or subject before being referred?

No. When the student is not progressing and the teacher has exhausted alternative strategies for instruction in the regular classroom, the student should be considered for one of the alternative programs in Title 19, Chapter 75.195, of the Texas Administrative Code or a dyslexia program.

36 To whom should the student be referred if there is a problem with speech or language development?

The normal special education referral procedures should be followed. For students identified as handicapped under IDEA, a speech pathologist usually provides services for students with identified language/speech problems in accordance with the decisions of the Admission, Review, and Dismissal Committee.

For more information about state dyslexia regulations, contact:

Dr. Sharon O'Neal
Director of Reading
Texas Education Agency
Division of Curriculum Development
(512) 463-9585

For more information regarding Section 504 of the Rehabilitation Act of 1973, contact:

The Office for Civil Rights
Dallas Regional Office
1200 Main Tower Building
Dallas, TX 75202
(214) 767-4500

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court Order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

(1) acceptance policies on student transfers from other school districts;

(2) operation of school bus routes or runs on a non-segregated basis;

(3) nondiscrimination in extracurricular activities and the use of school facilities;

(4) nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;

(5) enrollment and assignment of students without discrimination on the basis of race, color, or national origin;

(6) nondiscriminatory practices relating to the use of a student's first language; and

(7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

It is the policy of the Texas Education Agency to comply fully with the nondiscrimination provisions of all federal and state laws and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any programs or activities which it operates on the grounds of race, religion, color, national origin, sex, handicap, age, or veteran status (except where age, sex, or handicap constitute a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency makes positive efforts to employ and advance in employment all protected groups.